

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

ROBERT GARNER d/b/a

§

KUSTOM KOLORS

§

BOATWORKS

§

*ex rel.* Andrew Dykes,

§

Plaintiff

§

CIVIL ACTION NO. 3:16-cv-81

v.

§

NAUTILUS INSURANCE

§

COMPANY,

§

Defendant

§

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant Nautilus Insurance Company (“Nautilus”) hereby files its Notice of Removal as authorized by 28 U.S.C. § 1441. In support hereof, Nautilus would respectfully show the Court as follows:

1. On February 19, 2016, Robert Garner d/b/a Kustom Kolors Boatworks, *ex rel* Andrew Dykes as Real Party In Interest, filed a lawsuit against Nautilus in the matter entitled *Garner v. Nautilus Insurance Company*, in the 56<sup>th</sup> District Court of Galveston County, Texas, case number 16-CV-0210. (**Exhibit A**, Plaintiff’s Original Petition and Request for Declaratory Judgment). The docket sheet for this matter is attached here as **Exhibit B**.

2. Service of the Original Petition was made on Nautilus through the Secretary of State of Texas on March 7, 2016. (**Exhibit C**, Certificate of Service).

3. On March 28, 2016, Nautilus filed its Original Answer, Affirmative Defenses and Special Exceptions. (**Exhibit D**, Nautilus Insurance Company’s Original Answer, Affirmative Defenses and Special Exceptions).

4. The above-entitled cause is of a civil nature at law brought by Plaintiff to recover damages and statutory penalties resulting from Nautilus’s denial of coverage of Plaintiff’s claim

for defense and indemnity of an underlying lawsuit. Plaintiff asserts claims for declaratory judgment, breach of contract, and violation of Section 541 of the Texas Insurance Code.

5. Robert Garner is an individual and resident of Texas. Mr. Garner is doing business as Kustom Kolors Boatworks which has its principal place of business in Texas. Andrew Dykes is an individual and resident of Texas.

6. Nautilus was incorporated in Arizona with its principal place of business in Arizona.

7. Thus, there is complete diversity of citizenship of Plaintiff and Defendant in this lawsuit.

8. The amount in controversy in this case exceeds the sum of \$75,000, exclusive of interest and costs, as evidenced by Plaintiff's letter to Nautilus wherein Plaintiff itemized and demanded payment for \$145,000 in alleged damages. (**Exhibit E**, Letter from The Crew Law Firm to Nautilus, dated January 6, 2016).

9. For these reasons, this Court has original jurisdiction over the matters made the basis of this lawsuit pursuant to 28 U.S.C. § 1332.

10. Galveston County, Texas is within the territorial jurisdiction of the United States District Court, Southern District of Texas, Galveston Division.

11. Pursuant to 28 U.S.C. § 1446(b)(1), removal is timely because Nautilus removed this case within 30 days of service of the Original Petition.

12. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to Plaintiff and will be filed in the 56<sup>th</sup> District Court of Galveston County, Texas.

13. An Index of Matters is being filed herewith as **Exhibit F**, and below is a List of Parties and Counsel:

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***Counsel for Plaintiff Robert Garner d/b/a Kustom Kolors Boatworks, ex rel Andrew Dykes as Real Party In Interest***

WHEREFORE, Defendant Nautilus Insurance Company, pursuant to and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes the matter entitled *Garner v. Nautilus Insurance Company*, in the District Court of Galveston County, Texas, case number 16-CV-0210, to this Court.

Respectfully submitted,

**PHELPS DUNBAR LLP**

/s/ Kasi G. Schuelke  
Kasi G. Schuelke  
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**ATTORNEYS FOR DEFENDANT  
NAUTILUS INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

In accordance with the Federal Rules of Civil Procedure, on the March 30, 2016, the Notice of Removal was served via certified mail, return receipt requested, and via the ECF filing system, upon:

Paxton N. Crew  
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*Counsel for Plaintiff*

/s/ **Kasi G. Schuelke**

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